

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

3 IN RE: } Case No. 18 C 864
4 DEALER MANAGEMENT SYSTEMS } Chicago, Illinois
5 ANTITRUST LITIGATION } June 18, 2018
 } 1:35 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT M. DOW, JR.

8 APPEARANCES:

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21 ALSO PRESENT:

22 MR. STEPHEN COTTRELL
23 CEO, Authenticom, Inc.

24 MR. MAYER GRASHIN
25 In-house Counsel, CDK Global, Inc.

1 (Proceedings heard in open court:)

2 THE CLERK: 18 CV 864, In Re: Dealer Management
3 Systems Antitrust Litigation.

4 THE COURT: Good afternoon, everybody.

01:35:36 5 MS. WEDGWORTH: Good afternoon.

6 MS. MILLER: Good afternoon.

7 THE COURT: Like an MDL case, a lot of people. Let's
8 see if I can take my roster here. So plaintiffs. There they
9 are. Good morning.

01:35:46 10 MR. HO: Good morning -- good afternoon, your Honor.

11 Derek Ho from Kellogg Hansen. Also here today from Kellogg
12 Hansen are Michael Nemelka and Joshua Hafenbrack. As your
13 Honor knows, we represent, among others, Authenticom. And I'd
14 just like to introduce Authenticom's CEO, Stephen Cottrell,
01:36:03 15 who's in the gallery.

16 THE COURT: Very good. Good afternoon. Welcome.
17 It's good to put all the names with faces. Some of you guys I
18 know.

19 Okay, Professor, nice to see you.

01:36:13 20 MR. ISSACHAROFF: Good morning, your Honor -- Good
21 afternoon. It's a pleasure being here. I'm liaison counsel
22 and I've been working with Mr. Ho in this case. Issacharoff,
23 I-s-s-a-c-h-a-r-o-f-f.

24 THE COURT: All right. Mr. Barz.

01:36:28 25 MR. BARZ: Good afternoon, your Honor. Jim Barz.

1 I'm on the plaintiff's steering committee on the dealer case,
2 and Ms. Wedgworth is lead.

3 MS. WEDGWORTH: Good morning -- good afternoon, your
4 Honor, Peggy Wedgworth from Milberg representing --

01:36:38 5 THE COURT: This 1:30 is tricking everybody.

6 (Laughter.)

7 MS. WEDGWORTH: I'll turn it around. Representing
8 the class dealership plaintiffs.

9 THE COURT: Okay. Very good. Ms. McNulty is behind
01:36:47 10 Mr. Barz.

11 MS. McNULTY: Good afternoon.

12 THE COURT: Did I with get everybody on this side?
13 Okay, great.

14 Ms. Miller?

01:36:53 15 MS. MILLER: Good afternoon, your Honor. Britt
16 Miller, Mayer Brown, on behalf of CDK Global, LLC, and
17 Computerized Vehicle Registration.

18 With me is my partner, Matt Provance, and also
19 in-house counsel for CDK, Mayer Grashin, is in the gallery.

01:37:07 20 THE COURT: Okay. Very good.

21 MS. GULLEY: Good afternoon, your Honor. Aundrea
22 Golley, Gibbs & Bruns, on behalf of Reynolds and Reynolds
23 Company, a defendant in some and in all of the cases. I am
24 here with Michael Cohen and Leo Caseria.

01:37:24 25 THE COURT: Okay. Well, good afternoon. Good to see

1 you all. I will eventually learn all of you guys' names and
2 faces, I'm sure. I said to Cassie -- this is Cassie, my law
3 clerk, and Cassie is a refugee from Kirkland, and she's worked
4 on some antitrust cases. I think she worked on Judge
01:37:41 Proctor's case, which is an antitrust case MDL that's down in
5 Birmingham, so she's had some experience in this. And you
6 guys have already been citing my previous antitrust MDL I saw
7 in the briefs here.
8

9 I met with Judge St. Eve this morning, too, and she's
01:37:55 kept me up to speed on this from even before it got reassigned
10 to me, so I've got some idea of what's going on here, but an
11 enormous homework assignment in front of me is to pick this
12 up.
13

14 You all can -- everybody who wants to be seated, can
01:38:10 be seated. You don't all have to stand here for the entire
15 time.
16

17 Let me start by putting on the record what you guys
18 already know, which is that I was a partner at Mayer Brown. I
19 think I've got people on both sides of this case who were at
01:38:22 Mayer Brown with me, so I'm sure all of you guys know that.
20

21 And the code of conduct rules require me to recuse
22 from Mayer Brown cases for five years. I recused for
23 ten years in an abundance of caution, but once I hit ten years
24 here, I thought it was time and I probably was far enough
01:38:38 removed that I don't even know all the Mayer Brown people on
25

1 this case, so I wanted to put that on the record. I know you
2 guys know that.

3 The irony of this is I think I worked more with
4 Mr. Panter than I did with Ms. Miller when I was at Mayer
01:38:50 Brown because we did all kinds of telecom cases together,
5 including *Trinko*, and *Twombly* I think we probably worked on
6 with you guys, too.
7

8 So I have connections to people on all sides of this
9 case, as I already explained to Kassie this morning, so -- but
01:39:07 10 I wanted that to be of record because the rest of the world
11 may not know what you guys know and someone who reads this
12 transcript some day.

13 Anyway, I'm really -- I love MDL cases, and I'm
14 really glad to have you guys. I know this is going to be a
01:39:20 15 really fun and interesting case for me. It's going to be a
16 lot of work for all of us, and I know I am woefully
17 underprepared today to tackle anything except to find out what
18 my homework assignments are, because this case was transferred
19 to me about three weeks ago.

01:39:34 20 The week it was transferred, I was on trial. I did
21 have a chance to talk to Judge St. Eve both before and after
22 that because I knew that the hammer was going to drop on me
23 here. And I'm delighted actually, I really think this is
24 going to be interesting, and MDL cases come with good lawyers,
25 which is also really nice.

1 Let me tell you what little I know, and what I
2 understand my homework assignments to be, and then you guys
3 can help me out with the rest of this. So here's the easy
4 part.

01:40:02 5 There's two motions to seal that are pending right
6 now, 192 and 207. I take it no one's objecting to that, and
7 everybody's going to file a lot of stuff under seal in this
8 case, so those are good to go?

9 MS. MILLER: Yes, your Honor.

01:40:14 10 MS. GULLEY: Yes, your Honor.

11 MS. WEDGWORTH: Yes, your Honor.

12 THE COURT: Excellent. Chorus of yeses. Okay. So,
13 Carolyn, 192 and 207 can be granted.

14 The next one that I wanted to talk about is 202, and
01:40:24 15 that's the motion to appoint Mr. Ho as interim lead counsel
16 for the vendor class.

17 Anybody have any comments on that motion?

18 MS. MILLER: Just to comment, your Honor, we're not
19 sure why it's ripe at this point. From our standpoint, it's
01:40:37 20 premature. The rules and the committee notes clearly say that
21 you appoint interim lead counsel if there's a conflict, if
22 there's more than one person vying for it, if there's the
23 possibility of uncertainty.

24 This wasn't a class action until two weeks ago. The
01:40:53 25 action was originally filed as an individual action on behalf

1 of just AutoLoop. There are no other counsel vying for -- to
2 represent the vendor class, and so unless and until there
3 comes a time that there is a conflict and there needs to be
4 the appointment of interim lead counsel, we just don't see a
5 reason for there to be an appointment at this time.

01:41:10 6 THE COURT: Okay. Mr. Ho?

7 MS. WEDGWORTH: Your --

8 THE COURT: Anybody can speak up if they wish.

9 MS. WEDGWORTH: Well, and also with regard to the
01:41:19 10 dealership class, we take no position on Mr. Ho's motion as to
11 lead counsel. We do note, as Ms. Miller just pointed out,
12 there may be conflict at some point in the future. At some
13 point damages issues will have the pass-on issue with regard
14 to vendors versus class dealership, so we just note that right
01:41:37 15 now, but we take no position on this motion.

16 THE COURT: Okay.

17 MR. HO: Professor Issacharoff has been advising us
18 on this, but I'll say for starters that as your Honor knows, I
19 am already one of the two co-lead counsels of this MDL, so one
01:41:51 20 of the reasons we wanted to front this motion with the Court
21 is just to have clarity as to who it is that we are
22 representing. We obviously have individual clients, including
23 Authenticom, Cox and VSC. We have applied now to be interim
24 lead counsel for a class of similarly situated vendors who are
01:42:12 25 essentially direct purchasers of the data integration services

1 that are at the core of this case.

2 So in our view, it is helpful to rounding out the
3 leadership of the MDL, the structure of this MDL, to have
4 clarity and certainty around which clients we represent in
01:42:30 this MDL. I don't know if Professor Issacharoff has more to
5 add.
6

7 MR. ISSACHAROFF: Just one point, your Honor, on the
8 timing question. One of the reasons for the creation of the
9 interim class counsel mechanism in the rules in the past
01:42:44 10 decade and a half is precisely so that we know who's
11 responsible for making certain kinds of decisions.

12 Ms. Wedgworth correctly says that there could be
13 conflicts down the road. We don't think there will be, but
14 there could be between the dealers and the vendors. It's
01:43:00 15 important that somebody be able to speak right from now for
16 the vendors as a whole, and the appointment of interim counsel
17 just imposes certain duties on Mr. Ho but gives him no other
18 benefits.

19 So it's a creation of an accountability mechanism
01:43:16 20 because decisions will be made in the course of discovery and
21 so forth that will affect these folks, and they deserve to
22 have somebody formally designated as their counsel at this
23 point, the interim counsel. With class certification decision
24 obviously being pushed down the road, I think this is faithful
01:43:33 25 to exactly why the new rule was created.

1 THE COURT: And I suppose that the potential benefit
2 of it is as you within the leadership of the -- on the
3 plaintiffs' side see issues that might fall under this realm
4 of potential conflicts, you know who speaks for whom, is
5 that --

01:43:50

6 MR. ISSACHAROFF: That's exactly right, and one of
7 the reasons that we proposed -- my role in this is this
8 strange new creation that Judge St. Eve liked of the liaison
9 counsel was to try to figure out if that's coming and then to
10 try to head it off in some fashion, and I think it's better,
11 if there are potential conflicts, not to leave some group
12 exposed and unrepresented altogether.

01:44:04

13 And that's why we propose doing this at this time,
14 and we think that rounds out both the leadership structure and
15 the responsibility and fiduciary duties in the case.

01:44:20

16 THE COURT: Okay. And how are the -- how would the
17 defendants be prejudiced in any way by this?

01:44:35

18 MS. MILLER: The concern we have is twofold. One,
19 that it's premature; but also there is an existing potential
20 conflict right now.

01:44:51

21 Kellogg Hansen, in addition to representing
22 Authenticom and MVSC and Cox and AutoLoop, also represents a
23 dealer, and Ms. Wedgworth properly pointed out that at some
24 point if we get to the point where we're at damages or
25 otherwise, the vendors are going to be saying we want to --

1 that we kept all of the damages and we didn't pass any on, and
2 the dealers are going to be saying, well, it all got passed on
3 to us.

4 And so the fact that Kellogg Hansen now represents
01:45:05 pretty much one entity in every level of the chain creates a
5 potential conflict now. And the case law at least we think is
6 clear, including as to the committee notes, it says that if
7 there's one law firm that is representing one plaintiff in a
8 putative class action, there's no need to appoint someone.

01:45:27 10 That named plaintiff and that named counsel will continue to
11 represent the named plaintiff and the putative class without a
12 formal interim appointment.

13 THE COURT: Now, everybody is interim in the sense
14 that if anything comes up in the future that would create
01:45:41 conflicts or otherwise, I mean I had my first -- you can go
15 through the 800 docket entries of my first antitrust MDL and
16 see that there was an issue that came up amongst counsel, and
17 we ended up having to take someone off the PSC basically. So
18 everybody's interim in that sense, I suppose.

01:46:01 20 But I guess without being able to touch my fingers on
21 any of these cases right now, if you want to file something
22 that tells me your position, that's fine. I don't think
23 there's any great urgency to this because you guys are all
24 going to be in the -- the conflict is unlikely to manifest
25 itself in the next month if it hasn't already done so. So if

1 you want to file something, how soon can you do it? If you
2 want to comment on this motion?

3 MS. MILLER: To the extent we decide to file
4 something, we could file it this week if you'd like.

01:46:29 5 THE COURT: I don't even -- I'll give you a whole
6 week if you want.

7 MS. MILLER: Fair enough.

8 THE COURT: So next Monday. And if you guys want to
9 reply to that if they file something in a week after that,
01:46:37 10 would that be do-able?

11 MR. ISSACHAROFF: Yes.

12 THE COURT: Nobody thinks there's any great urgency
13 to resolving this, right? This is really a prophylactic thing
14 to keep all the lines clear, but, you know, you guys are
01:46:48 15 co-lead counsel, and you're responsible for everybody, and
16 you've got this team behind you that's responsible for
17 everybody, and the professor is overseeing or helping you guys
18 out, not only in this fashion but also in the fashion of a war
19 team and a peace team, I think I saw in there. So there's no
01:47:06 20 issue with giving you guys two weeks to kick this around?

21 MR. ISSACHAROFF: Not from our standpoint, your
22 Honor.

23 THE COURT: Okay. So today is the 18th.

24 THE CLERK: 6/25 and 7/2.

01:47:17 25 THE COURT: Okay. Great. And then I'll take a look

1 at this, and if I have further questions for you, I'll let you
2 know.

3 We'll set another date at the end here, too, that
4 will work for everybody to come back, and I hope by then I've
01:47:29 5 had more than -- this weekend really is what I had to start
6 tackling what you guys had for me.

7 MR. HO: And, your Honor, if I may address one quick
8 thing so there's no misunderstanding between us and
9 Ms. Miller.

01:47:39 10 We did initially file a case on behalf of the dealer,
11 but Ms. Wedgworth represents the putative dealer class. It's
12 up to Ms. Wedgworth whether she wants to include the dealer
13 that we represented as a named plaintiff or in some other
14 fashion. So from our standpoint, yeah, that's in
01:47:55 15 Ms. Wedgworth's hands as opposed to ours at this point.

16 THE COURT: So what you're proposing then is
17 basically you guys are the vendors and they're the dealers
18 amongst this two-headed leadership with all the other
19 subheads.

01:48:08 20 MR. HO: And there's also a competitor -- several
21 competitor cases as well, but as between the vendors and
22 dealers, you're exactly right, your Honor. We wouldn't be,
23 you know, continuing to pursue claims on behalf of the dealers
24 except insofar as Ms. Wedgworth wants to use the dealer that
01:48:26 25 we represented as part of her class action.

1 THE COURT: And if I understand it that way, then
2 your proposal to become interim lead counsel for the vendor
3 class is completely consistent with the two-headed monster
4 that you guys are, right?

01:48:38

5 MR. HO: Correct, your Honor.

6 THE COURT: Okay.

01:48:49

7 MS. MILLER: And we certainly appreciate the
8 clarification. The reason this came up is because on a
9 meet-and-confer call a handful of days ago, Kellogg Hansen
10 specifically said that they still represented Bob Baker, which
11 is a dealer, and that they hadn't dismissed their complaint
12 and thereby leaving the impression that they were continuing
13 to pursue and represent a dealer.

01:49:01

14 So we had no reason -- we appreciate that he's now
15 saying that he's not, but there are a number of -- there are
16 seven dealers that filed suit, eight total, but one has
17 already voluntarily dismissed. There are seven dealer
18 plaintiffs, including Bob Baker Volkswagen represented by
19 Kellogg Hansen that filed suit originally but are not named
20 plaintiffs in the consolidated amended class action complaint.

01:49:18

21 And if it's plaintiff's position that those people
22 are no longer named plaintiffs in any way, then we're fine.
23 But, otherwise, we need to know if they're -- are they
24 opt-outs? Are they going to be participating in discovery?
25 Do we have to move to dismiss their complaint? Because

01:49:35

1 technically, as Mr. Nemelka pointed out on the
2 meet-and-confer, he hasn't dismissed his Bob Baker Volkswagen,
3 so he was clearly taking the position that the consolidated
4 amended complaint did not supersede his individual complaint.

01:49:51

5 MR. ISSACHAROFF: Your Honor, if I may address that.
6 As the Court knows, the Supreme Court just ruled on statutes
7 of limitations and what the tolling is. We could not possibly
8 dismiss the complaint on behalf of our individual client
9 because it is perfectly possible that this Court will reject
10 all class certifications, and there will be only individual
11 cases left in the MDL.

01:50:07

12 And so we're not going to dismiss. That would be --
13 that would be a breach of our duty to the client. And so the
14 fact that this is sitting there in abeyance pending class
15 certification issues on the dealer side is of no moment.

01:50:22

16 THE COURT: And obviously the two -- the two co-leads
17 are going to have to work together and coordinate one way or
18 the other, but I guess what you guys are telling me, and it's
19 consistent with the idea of proposing an interim lead counsel
20 for the vendor class, is that on the vendor side, Mr. Ho is
21 going to be doing the talking, and then on the dealer side,
22 Ms. Wedgworth is going to be doing the talking, and to the
23 extent that there's any conflict, you guys know what side you
24 have to stand on, right?

01:50:41

25 MS. WEDGWORTH: Correct.

01:50:59

1 MR. HO: Yes, your Honor.

2 MS. GULLEY: Your Honor, just so I understand -- this
3 is Aundrea Gulley again.

4 I believe what Professor Issacharoff just said,
01:51:07 however, is that those are opt-outs. That's the whole point
5 of the Supreme Court's ruling on -- you know, in that
6 securities case, whether or not the statute of limitations is
7 tolled for -- you know, during the pending of the class
8 certification.

01:51:20 10 Kellogg Hansen represents a dealer, and what I
11 believe the professor is saying is Kellogg continues to
12 represent a dealer. So regardless of sort of which position
13 they're taking, as between the two of them, they still do have
14 a dealer client; and, therefore, there is, by definition, this
01:51:41 15 conflict between the pass-through and the non-pass-through,
16 and that they are not going to be dismissing the case. So
17 just to be clear.

18 THE COURT: Well, let me see if I can unpack that a
19 little bit, though, because it's certainly conceivable, I can
01:51:53 20 understand in light of that Supreme Court case they don't want
21 to dismiss the case, but that doesn't mean they can't
22 substitute counsel or something like that.

23 MR. ISSACHAROFF: Absolutely, your Honor.

24 THE COURT: Maybe that's the thing you guys should be
01:52:04 25 thinking about.

01:52:14

1 MR. ISSACHAROFF: We might do that. It depends on
2 this Court's rulings down the road, depends how the case
3 matures, but I think one of the questions that your Honor
4 asked of the defense side is how are they prejudiced by any of
5 this? They're raising abstract questions of conflict.
6 They're not conflicted. We're not conflicted with them on
7 this issue.

01:52:27

8 This is something that we will work out with
9 Ms. Wedgworth as the case matures and as we see what the class
10 certification rulings of this Court will be.

11 THE COURT: And that's long into the future,
12 according to the schedule I just looked at.

01:52:38

13 MR. ISSACHAROFF: That's correct, your Honor.
14 There's nothing -- there's nothing operative in this right now
15 in terms of the discovery necessary for Authenticom to get to
16 trial, which is the main driving engine right now.

01:52:56

17 And in the meantime, Ms. Wedgworth will represent the
18 dealer class. Our proposal is that Mr. Ho represents what
19 we've called the vendor class and that the case proceed with
20 these two silos, these two tracks, coordinated, which is the
21 way it has been effectively.

01:53:11

22 THE COURT: Well, and you guys can mention in your
23 briefs, if you like, how this all plays out at the moment,
24 which is all -- I mean, as I said, everything is sort of
25 interim in an MDL in the sense that things come up and things

1 move and things change, and I don't know if the answer -- if
2 there's anything at the moment. If there's no present
3 conflict, then I don't know what the big issue would be, but
4 if you see something, you can tell me what it is, and you can
01:53:29 5 think about whether -- I mean, it's all one big case
6 obviously, but if someone substituted for Kellogg on the one
7 dealer case that they're still involved in, as long as the
8 plaintiff isn't prejudiced by having the case dismissed, does
9 it really matter who the named lawyer is in the case? They're
01:53:45 10 all going to be part of the big case, and they may be part of
11 the class, and they may be a named plaintiff, they may not be,
12 may be an absent member.

13 But one way or the other, it sounds like this is a
14 very small gnat on the tail of a very large elephant, but you
01:53:59 15 guys can explain to me if it's more than that at the moment,
16 and if it is, then, fine, I'll deal with it sooner than later.
17 If not, let me get to the thing that is on my plate right now
18 that's of I think greater moment to you guys, and that's the
19 other motion that I see still has a gavel next to it, and
01:54:16 20 that's 195.

21 And I was going to ask for a reply brief today, but
22 lo and behold, there it was this morning when I went on the
23 docket. So that appears to be fully briefed. I had a brief
24 conversation with Judge St. Eve about it this morning, and I
01:54:30 25 basically said it sounds like they don't necessarily agree

1 about what you said before. And I said I'm only going to
2 bother with you with this if I get to the end of my own
3 archaeology project and I still can't figure it out, but
4 that's an archaeology project for me is to go back and look at
01:54:45 Authenticom and look at what happened with Judge Peterson and
5 then look at what the Seventh Circuit said and then look at
6 what you guys agreed to, it looks like, and look at how that
7 squares with Judge St. Eve's order and how that squares with
8 the compliance with the order and where that leaves us between
9 01:55:01 10 600,000 documents and 2.2 million.

11 But that I haven't gotten to yet, and once I get
12 through the briefs and the digging through the layers, if I'm
13 still baffled, I will probably call her first, and then I'll
14 call you guys and say you've got to come in and help explain
01:55:19 15 this to me.

16 I will do my best to figure this out on my own, but I
17 know I have places I can go and I know you guys are all really
18 good and you will give me what I need when I need it or
19 sooner, as the case was this morning. I said to it must have
01:55:36 20 been my wife because I wouldn't have said this, no one else in
21 the house would care, but I said I think I'm going to have to
22 ask for a reply brief this morning, and then there it was when
23 I looked at the docket this morning.

24 But I will say I have only given those a once-over.
01:55:47 25 I think the response brief maybe came in Friday, does that

1 sound right?

2 MS. WEDGWORTH: Yes, your Honor.

3 MR. HO: Yes.

4 THE COURT: So I gave them a once-over with the
01:55:54 hundreds of other pages I read this weekend trying to get up
5 to speed.

7 I did say to Judge St. Eve how grateful I was that
8 she sorted out all of the counsel situations and also gave me
9 a scheduling order, which has now been entered by a Seventh
01:56:09 Circuit judge, so I feel very good that we'll be able to stick
10 to that scheduling order as best we can.

12 All cases come up with things that happen in the
13 interim, but I will do my best to adhere to that. I know you
14 guys are steering between the Scylla of the Seventh Circuit
01:56:25 opinion and the Charybdis of the MDL proceeding, so I'm going
15 to try to, you know, keep us on course there, but I appreciate
16 all that you guys have done and all that she did to hand me
17 off an MDL that's in really good shape with great lawyers.

19 In my other MDLs, you may have seen that I have been
01:56:44 blessed with Judge Gilbert on both of them, and I'm blessed
20 with Judge Gilbert again on this one. And he was a commercial
21 litigator for 25 or 30 years at a big firm in Chicago, so he's
22 really, really well-situated to help us.

24 I don't at the moment see anything that he needs to
01:57:00 help us with, but I think you guys should expect that if there

01:57:20

1 are some complicated discovery issues in this case, I will get
2 him involved. He's been absolutely spectacular in my other
3 MDLs, and if the JPML ever has a panel that invites magistrate
4 judges, I'm going to nominate him to come down to The Breakers
5 because he knows a lot and he's been very helpful on this, so
6 don't be surprised to see him at some point.

7 We've sat in two-judge panels for our MDL hearings
8 before, too, so everybody can get us up to speed at once.

01:57:35

9 And the other thing on my schedule is when should I
10 see you guys again? I looked on the calendar, and it looks to
11 me that if you have motions to compel besides the one that I
12 already have, which is sort of the backwards of a motion to
13 compel, that those are due in early August. So I thought
14 maybe what I would do is set you guys for a status in
15 mid-August, see if anything comes in there.

01:57:50

16 If it doesn't come in there, we'll all rejoice and be
17 glad, but you guys can still, you know, get me up to speed on
18 where things are going, how things are going, how else I can
19 help you. And you should also know that any time you guys
20 need to see me -- and the *Fluidmaster* people knew this and
21 still know it, and the cheese people knew it, too -- you can
22 always call Carolyn if you need to come and see me, and we'll
23 get you in as soon as we can at any time, because obviously
24 judicial case management is really important in all cases but
25 especially in MDLs. So any time you guys feel the need to see

01:58:08

01:58:25

1 me, just make the suggestion to Carolyn, and I won't run you
2 off.

3 But does that sound okay? Does mid-August sound like
4 a good time to come back, or is there anything you guys
5 anticipate that you need to see me before then?

6 MS. GULLEY: Mid-August.

7 THE COURT: I will give you a ruling on this motion
8 before then, and if I need more help, I will see you long
9 before then.

10 But is there anything you guys see on your schedule
11 or in your, you know, whatever private conversations you guys
12 are having about this case that would be helpful to see a
13 judge before mid-August?

14 MS. MILLER: No.

15 THE COURT: Everybody okay with that?

16 MS. GULLEY: That's great.

17 MS. WEDGWORTH: That works for us, your Honor.

18 MR. HO: Yes, your Honor.

19 THE COURT: Okay. I'm going to give you a date now
01:59:05 20 with the knowledge that I'm going to offer every week, though,
21 I have open in August to some people who tell me they need a
22 trial date with a criminal defendant in custody tomorrow, and
23 if that happens, I may move you guys. It looks -- it's a gun
24 case, a 922, so I don't think it's going to be a long trial,
25 but I don't want to have you guys come the same day I have a

1 jury here because I want to make sure I've got plenty of time
2 for you.

3 But for now let's put you guys in -- how is the 16th
4 for you guys?

01:59:35 5 MS. GULLEY: That's great, your Honor.

6 THE COURT: Is that okay?

7 MS. WEDGWORTH: Yes, your Honor.

8 THE COURT: Okay. And, Carolyn, I want to put these
9 guys at a time where nobody else is behind them.

01:59:40 10 THE CLERK: Any time is good.

11 THE COURT: Any time is good.

12 That's because we were supposed to have a trial
13 that's supposed to be a month with a pro se defendant starting
14 that week, but the Supreme Court took that out of our hands in
01:59:52 15 some case they GVR'd to the Seventh Circuit, so I'm happy
16 about that. You guys are going to be much easier than a pro
17 se criminal trial for a month no matter what you give me.

18 So let's do it at 10:30 that day because some motions
19 and statuses are going to fill in there if that's okay for you
02:00:06 20 guys. I know some of you all are coming from New York and
21 Washington, and that works well for you guys --

22 MS. GULLEY: Houston.

23 THE COURT: Where, Houston?

24 MS. GULLEY: Yes.

02:00:13 25 THE COURT: Well, that's in the same time zone.

1 Everybody who's coming from the East, this works well coming
2 this way because you get the hour back so you land half an
3 hour after you took off in clock time because if we do it at
4 10:30 you conceivably, O'Hare permitting, get here at the same
02:00:31 day. Probably won't risk that.

6 MR. HO: Probably not, your Honor.

7 THE COURT: Yeah, okay.

8 (Laughter.)

9 THE COURT: All right. Anything else that I can help
02:00:39 you guys with today?

11 MS. MILLER: I have a couple of housekeeping things,
12 your Honor, if we may.

13 THE COURT: Great.

14 MS. MILLER: On AutoLoop on the new putative vendor
02:00:48 class, they filed a -- the complaint instead of responding to
15 our motion to dismiss, but we've reached agreement with Mr. Ho
16 for a briefing schedule for our motion to dismiss the new
17 complaint.
18

19 THE COURT: Okay. Now, help me out here, just give
02:01:01 me some numbers.

21 MS. MILLER: Sure.

22 THE COURT: What's the number of the complaint we're
23 after?

24 MS. MILLER: The complaint for AutoLoop is Docket
02:01:06 25 194.

1 THE COURT: 194, yeah, that's the sealed one. 191 is
2 the public version. 192 is the permission to seal it.

3 Okay, perfect. So 194, you want to move to dismiss
4 that.

02:01:19 5 MS. MILLER: Yes.

6 THE COURT: And you've got an agreement on the
7 schedule, so fire away.

8 MS. MILLER: We put it on the same schedule that the
9 motion to dismiss the dealer class complaint is on, so we will
02:01:28 10 file our motion to dismiss by July 11th.

11 THE COURT: Okay.

12 MS. MILLER: And then plaintiffs' response would be
13 due August 1st, and the reply would be due August 15th.

14 THE COURT: Okay. Perfect. Thank you.

02:01:42 15 MS. MILLER: That's housekeeping No. 1.

16 THE COURT: Okay.

17 MS. MILLER: Housekeeping No. 2, as your Honor is
18 likely aware from the case management schedule, all of our
19 discovery responses for both sides are due this Friday with
02:01:55 20 the exception of one defendant who's still waiting on
21 discovery to be served on it.

22 THE COURT: Okay.

23 MS. MILLER: But also due this Friday is our answers
24 and counterclaims to the Authenticom complaint.

02:02:14 25 THE COURT: Okay. I see response to discovery,

1 June 22nd.

2 MS. MILLER: It's -- your Honor, St. Eve -- Judge St.
3 Eve put a separate minute order in setting a schedule.

4 THE COURT: Ah, okay.

02:02:24 5 MS. MILLER: At Docket No. 175 was her minute order.

6 THE COURT: 175. Okay. So you want to adjust those
7 schedules?

8 MS. MILLER: Your Honor, we'd like an extra week, if
9 we could, to file our answer and counterclaims. They're
02:02:35 10 currently due on Friday, the 22nd.

11 Given the discovery obligations we have, we would
12 appreciate an additional week.

13 THE COURT: Okay. So that would be we'd amend 175,
14 the schedule set in 175, to give you 6/29 instead of 6/22.

02:02:49 15 MS. MILLER: Yes, your Honor.

16 THE COURT: Okay. Everybody good with that?

17 MS. WEDGWORTH: I am certainly good with it, but that
18 is Mr. Ho's call.

19 THE COURT: Okay.

02:02:57 20 MR. HO: Your Honor, this is the first I'm hearing
21 about it, but I think we're fine with the extra week.

22 THE COURT: Okay. Sold. Extra week.

23 MS. MILLER: Thank you.

24 THE COURT: 6/29.

02:03:05 25 And then the 6/22 -- so that's what you're going to

1 do, between now and Friday you're going to get your discovery
2 responses done, and then you're going to start cranking the
3 answer out next weekend.

4 MS. GULLEY: And counterclaims.

02:03:16 5 THE COURT: And counterclaims, of course. Okay.

6 All right. That's fine. Anything else on the
7 housekeeping?

8 MS. MILLER: The only other issue, and we're happy to
9 take it up with counsel, but the amended class action
02:03:26 10 complaints that have been filed are fairly, as I'm sure your
11 Honor has noted, voluminous. We are going to need more than
12 15 pages to respond to each of them. We're happy to discuss
13 page limits with opposing counsel and, if we can't reach
14 agreement, bring it back to you.

02:03:39 15 THE COURT: That's fine. Discuss amongst yourselves.

16 MS. MILLER: Fair enough.

17 THE COURT: As many of you know, I was an appellate
18 lawyer in practice. I was not a trial lawyer, and I was very
19 bummed out when the Illinois Supreme Court took us from 75 to
02:03:51 20 50. How can we live with this?

21 It turns out you can write everything you need to
22 write in 50. 15 is a little tight now I know for a case like
23 this. You can scour the 1700-minute -- 1700 entries in the
24 other antitrust cases and the other MDLs I've had and look for
02:04:10 25 all the motions for leave to file excess pages and see if any

1 of them have ever been denied. I don't think you'd find one.

2 But I would like you to talk amongst yourselves
3 because I always say goose for the goose, goose for the
4 gander, however that goes, so if you take 50, they get 50,
5 too, and that piles up in the end.
02:04:26

6 So talk amongst yourselves. I'm confident you'll
7 work this one out. If you don't, that's what I'm here for.
8

9 MR. HO: Your Honor, your guidance may actually be
helpful in this regard.
02:04:36

10 Many of the motions to dismiss that are still pending
11 and relate basically to issues that were also at stake in the
12 Authenticom motion to dismiss, so many of the -- those issues
13 have been decided in the context of the Authenticom case, and
14 I imagine that many of the issues that the defendants might be
02:04:57
15 tempted to move to dismiss on in AutoLoop are also issues that
16 were also already decided in Authenticom.

17 I think the briefing could be a lot shorter if both
18 sides agreed to forgo trying to relitigate those issues
19 because at least from our standpoint, they're law of the case.
02:05:14
20 They're not really subject to being relitigated. That, from
21 our standpoint, would significantly shorten the number of
22 pages that would be required because all that would have to be
23 done is to move to dismiss on any issues that were not already
24 addressed in Authenticom.

25 And in the context of AutoLoop, I don't think that
02:05:29

1 there are actually that many outstanding issues.

2 THE COURT: Okay.

3 MS. MILLER: Your Honor, it will probably not
4 surprise you that the two sides take a different perspective
5 on exactly what that decision says in terms of --

6 THE COURT: Well, I already told Judge St. Eve you
7 take a different position on what she's previously said about
8 the scope of discovery, so that wouldn't surprise me.

9 MS. MILLER: So we'd like to -- we'd like to brief
10 the issues. We're not -- we don't -- for AutoLoop, we don't
11 anticipate seeking many more the 15. The class complaint is a
12 little different. It's 700-some-odd paragraphs, 50 counts and
13 61 exhibits, so we're certainly going to need more there.

14 But we will certainly work to keep it as short as we
15 can, but we believe that certainly we need to address how we
16 think the Authenticom opinion affects these other motions.

17 THE COURT: Well, and I think to Mr. Ho's point, I
18 think you can anticipate that the very first thing I'm going
19 to read is Judge St. Eve's opinion, and I thanked her for the
20 52 pages of work that she absolutely 100 percent could have
21 left for me and decided not to because she's a nice person and
22 also very on top of things, so she was able to crank out a
23 52-page opinion while she was trying to, you know, move her
24 office.

25 But that's where I will start, and if you guys want

1 to incorporate things that you previously said to her in
2 briefs that are on my docket or you want to work off of that
3 opinion to say it's either right or it's wrong, I mean
4 obviously it is law of the case and obviously it is pretty
02:06:58 5 recent, but if you guys want to work off that to shortcut
6 things, you're more than welcome. I can just tell you that's
7 where I'll start. Anyone would start there.

8 So, you know, the shorter you can make them the
9 better, but I get it. I'm happy to read briefs. That's
02:07:15 10 pretty much what I've done for the last 25 years, so it's all
11 good.

12 MS. GULLEY: Your Honor, just to be clear, the
13 Reynolds and Reynolds Company is not a defendant in the vendor
14 class action, so I take no position.

02:07:26 15 THE COURT: That's okay. I'm looking at both of you,
16 but I'm really looking at Ms. Miller, okay?

17 MS. MILLER: Thanks, your Honor.

18 MS. GULLEY: With respect to the class complaint, we
19 are certainly differently situated here. The allegations are
02:07:36 20 not the same, and so we definitely take a different view with
21 respect to the much longer class complaint that we'll be
22 moving to dismiss.

23 THE COURT: Well, when we get to these issues, if you
24 want to take one step to the side, then I can laser in on
02:07:49 25 Ms. Miller here. But, yeah, no, I appreciate that, and you

1 guys can certainly remind me of things that are like that
2 because it's going to take me a while to get fully up to
3 speed, and there's -- I talked to Kassie about the binder we
4 need to put together, and it's not going to be a thin one.

02:08:04 5 So -- but thank you, everybody, for helping me get up
6 to speed.

7 Are the defendants all good for today?

8 MS. MILLER: We're good, your Honor.

9 THE COURT: Plaintiffs all good for today?

02:08:11 10 MR. HO: We are, your Honor.

11 MS. WEDGWORTH: We are, your Honor.

12 THE COURT: Okay. Good to see you all. See you in
13 August. Stay cool.

14 MS. MILLER: Thank you, your Honor.

02:08:18 15 MS. WEDGWORTH: Thank you, your Honor.

16 THE COURT: Take care.

17 (Which were all the proceedings heard.)

18 CERTIFICATE

19 I certify that the foregoing is a correct transcript from
20 the record of proceedings in the above-entitled matter.

21 /s/Kathleen M. Fennell June 20, 2018

22 _____
23 Kathleen M. Fennell _____
24 Official Court Reporter Date
25